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Eastern District of Washington

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DATE: April 10, 2002

FROM: Ted McGregor

TO: Advisory Committee; Judge Williams, Don Boyd, Judge Rossmeissl, Judge Klobucher, Jake Miller, Ford Elsaesser, Dan Brunner, Rolf Tangvald, Greg Beeler, Erik Bakke, Dan O'Rourke, Jan Armstrong, Bonnie Charney, Jennifer Aspaas

SUBJECT: Report of March 22 meeting of Standing Advisory Committee

The meeting was called to order by co-chairpersons Chief Judge Williams and Association President Don Boyd. All members were present except for Judge Klobucher and Ford Elsaesser. Also present were Bev Benka, Joe Harkrader and Mike Todd from the office of the chapter 13 trustee.

Judge Williams reported that both chambers in Spokane were very busy and that Judge Klobucher was covering for her when she was away from the office. Judge Rossmeissl reported that although busy, his chambers is working well. He also reported that the recipient of the Ward Hanel Award was Jason Alderson who would be entering onto extern duties in Yakima from May 15, 2002 until August 15, 2002, and would then be operating from Spokane the remainder of his term. He noted that Jason had been out of college for about 10 years before entering law school, and that during that period he had operated a 1000 acre ranch in the Tri-Cities area.

Judge Rossmeissl also noted that video conferencing between the two chambers was just being installed and that he anticipated that it would enhance communications between the two sites. He thought that it would be particularly helpful in communications with the extern.

Jan Armstrong inquired if the video conferencing equipment located in the District Court in Richland could be used with the Bankruptcy Court equipment. It was explained that although the equipment itself should be compatible, coordinating its use would have to be worked out with that court. Judge Williams said she would follow up the discussion with Judge Shea. It was noted that Montana Bankruptcy Court has been using video applications very successfully for some time to greatly reduce the travel requirements of the court, yet enabling the court to deal

with matters requiring hearings. Judge Rossmeissl observed that having the equipment available will permit the court to reach a greater comfort level in its use. When asked about the cost, Ted indicated that where it involved transmissions between the two court sites, there likely would be no cost to the participants, but that might not be true to off site use, particularly if it was with a non-judiciary site.

Don Boyd next gave the report of the Association. He indicated that the Association is in good financial condition, and the issues with the IRS appear to be resolved satisfactorily. A third session of the mediation seminar series is being planned for mid May of 2002. He reported that it would be necessary to find a site other that the law school, since it would occur during their finals time. The use of court facilities was considered, but would not work because the session would require break out rooms.

He reported that the Sun Mountain arrangements have been by and large completed. The meeting this year is set for June 7 and 8, with seminar registration the evening of June 6.

He said that a somewhat tardy edition of NOTES was due to be distributed very soon, and that the intention was to get a follow on edition out before Sun Mountain. The Association also authorized the purchase of "Freedom" plaques for each of the courtrooms.

Next, Ted gave the report from the Clerk's office. He noted that filing for the year 2001 topped all previous records, with 10,096 cases filed. The distribution of cases within the district were 38% for Spokane, 18% for the Tri-Cities, 27% for Yakima, 8% for Wenatchee, 7% for Moses Lake and 2% for Pullman. He also explained that numbers of filings are only one measure of the work addressed by the Clerk's office. He explained that for each event in a case, a docket entry is made, the vast majority of which involves a deputy clerk performing some action. During the month of February 2002, some 21,681 entries were made. Of these, approximately 52% involved pending cases and adversary proceedings, 33% were new cases, and 15% were either totally or partially accomplished electronically. Of interest is that for the same period in 2001, only 10% were in the electronic category. Claims were not a part of the figures reported on. He also reported on several electronic initiatives: Electronic filing with the Chapter 13 office is now at about 70%, and expected to shortly rise to over 90%; mailing of the chapter 13 plans through the BNC has been operating without a hitch and has been a tremendous savings to the Chapter 13 office; digital audio recording is now in place in both Yakima and Spokane chambers; and the court has adopted a local rule and established guidelines as a prerequisite to electronic filing. Ted reported that in the very near future thanks to the installation of additional equipment, the BNC will be able to deliver paper copies of schedules, statements of affairs, etc. to the U.S. Trustee, case trustees, and other entities entitled to receive the copies; this will lead to the elimination of copies presented at time of filing. He also noted that methods to accomplish scanning were being looked at since the demand for more rapid availability of images was being heard. Judge Williams is experimenting with the electronic entry of orders.

Ted also announced to the members that changes to LBR 2016-1 and 2083-1 had been adopted and were effective nunc pro tunc to January 1, 2002. The biggest change to these rules was the introduction of the flat fee in Chapter 13 cases. Jan Armstrong asked that if the rule was

effective nunc pro tunc to January, what effect that would have on cases filed after January, but before the rule was even promulgated and where the old plan and forms were used.. There was no ready answer to the inquiry, except an indication that it would be addressed. Ted also brought to the attention of the group, proposed changes to FRBP 1005 concerning the use of only the last four digits of social security numbers. He suggested that any comments should be made to the national committee on rules.

Jake Miller next reported on the Office of the United States Trustee. Jake reported that a new head of the EOUST (Executive Office of the United States Trustee) had been appointed. He is Larry Friedman, a former Chapter 7 trustee. Changes that he said would be taking place, and with a sense of immediacy, were more national uniformity, higher interest in civil enforcement, such as substantial abuse (707(b)), denial of discharge (727), petition preparer matters (110) and attorney fee issues (329). The U.S. Trustee office will begin to seem more like a U.S. Attorney's office and less like a Clerk's office. He also reported that Jan Ostrovsky has resigned and that a replacement will be appointed. He reported that although it might be too soon to tell, the increased emphasis on getting correct Social Security numbers and positive identification from debtors seemed to be going well, and that the error rate in the Social Security numbers seemed to be about 1%, which was the national statistic. Dan O'Rourke noted that requiring this additional information, plus the required questions was adding about 20 minute to each hour. Dan Brunner and Mike Todd both reported that most debtors had the information or were quick to get it.

Next, Rolf Tangvald gave the update from the Office of the U. S. Attorneys Office. He reported that James A. McDevitt had assumed duties as the U.S. Attorney. He noted that Jim had attained the rank of Brigadier General in the Washington Air National Guard. He also reported that Jim Shively who was the acting U.S. Attorney is now the First Assistant, and that Bill Beatty is the Civil Chief. He reported that there were some bankruptcy fraud cases pending, and that the information leading to the initiation of a case generally is received from the FBI, U.S. Trustee, or a disgruntled employee. He noted that 727 actions almost always had a criminal element to them. He said that about one or two bankruptcy crimes are prosecuted annually.

It was noted from Ford Elsaesser's letter that the Eastern district leads the nation in chapter 12 filings. Judge Williams noted that an e-mail from the ABI indicated that some from of relief under Chapter 12 was going to be passed.

Dan Brunner next reported on the Chapter 13 office. He noted that it was anticipated that his office would disburse approximately 18 million dollars in the current fiscal year. He reported that his computer system had undergone some computer security enhancements , but that no disruption is service was noted. He said the electronic filing initiative is proceeding with great success. He also reported that the contract with a third party vendor that will provide noticing services, which he calls the TPNC (Trustee Private Noticing Center) due to its similarity to the BNC, is almost in place. Once this is done, any "filed" documents sent to parties will actually show the filed date as well as the clerk's office docket number on their face. He reported that there has been some national interest in the process of electronic filing from other trustee offices. The process is compatible with CM/ECF, the judiciary's national electronic filing system. He also noted that his electronic public system recently underwent various

upgrades, which from an access point of view did cause some confusion. Access to his system is limited to parties in interest, which is a requirement of the U.S. Trustee. Unlike the court's information, the financial data on the trustee site is not public information. A dialogue developed among several of the members as to what information was available, with each of the participants providing input. It was generally agreed, however, that there is a wealth of information on the site and of use to all parties in interest.

Next, was the report of the Chapter 13 Sub-committee. That group has discussed many issues of interest to the Chapter 13 players. It was reported that a working group was appointed by the sub-committee for the purpose of addressing issues as to how attorney fees are paid through a plan. It was reported that the working group met once and after approximately 3 hours of spirited discussion scheduled a second meeting. Greg Heline and Jan Armstrong agreed to draft language to be included in the plan which will form the basis of the discussion for the next meeting. The situation that gives rise to the issue is where the debtor fails to make a plan payment, or makes only a partial payment. The working group hopes to have a positive report for the 13 committee by its next meeting.

The Proof of Claim working group next explained recommended changes to the official proof of claim form. This group was formed to address concerns that one of the reasons why there were significant error in proofs of claim was the design of the form itself. The committee, after reviewing the changes, approved them as submitted, except that the font size should be made uniform, the "Basis for Claim" section should be numbered, and the parentheses following the block numbers should be deleted. Ted said that he would make the changes suggested and submit the form to the judges for approval.

Judge Rossmeissl also shared that chambers were discussing some changes to the process of confirmation of plans in Chapter 13. The suggestion being discussed is to set and notice the confirmation hearing date with the notice of the meeting of creditors. He said that the ideas were being staffed up, and expressed that one of his concerns was maintaining control of his own docket.

Next, Ted explained a proposed new rule 4041-1 Dismissal of Adversary Proceedings. The rule would require notice to the MML where any party would seek to voluntarily dismiss an adversary proceeding seeking to deny or revoke the granting of a discharge pursuant to 11 USC 727. The committee reviewed the draft rule and suggested two minor word changes. With the changes the committee unanimously approved the rule, and so advised the judges. Ted said he would make the changes and seek the authority of the judges to advertise the rule for public comment. He said that since NOTES was due to be published in the very near future he likely would make it a part of his submission to that publication.

Next to be discussed was attorney admission, and under what circumstances an attorney would need to be admitted. It was explained that the practice has been in the past that an attorney who filed a petition for relief or and Adversary Proceeding would need to be admitted. However, if the attorney filed a pleading that would not involve participation in a hearing, the practice was that the attorney would not need to admitted. Judge Williams asked if there were any particular

problems in this area. The thinking of the group seemed to be that this was not a troublesome area. Jennifer noted that thanks to automation, being admitting is really quite simple and hassle free.

Judge Williams explained changes to the attorney discipline rule of the district court, which are applicable to the bankruptcy court. She shared that the reason for the action was a 9th circuit ruling that stood for the proposition that just because an admitted attorney was disbarred or suspended from practice by the state supreme court, did not automatically disbar or suspend them in federal court. Thus, the rule change would require a separate finding by the federal court to take an action against such an attorney before that attorney would be disbarred or suspended.

Next was discussion of a letter submitted by Ian Ledlin concerning making a rule that would limit FRCP 26, disclosure, to not be applicable to contested matters unless specifically ordered by the court in a particular matter. During the course of the discussion Jake noted that there was already a general order doing just that. After additional discussion the group suggested that first the issue be looked into as to whether or not the general order was still valid, and then the issue of whether the general order ought to be made into a rule, using the standard rule making process. It was noted that FRCP 26 applies to adversary proceedings, and it is only for contested matters that the court can opt out. The committee was divided, or perhaps fragmented, as to the main discussion of whether or not FRCP 26 should be applicable to contested matters. The committee appointed a working group to study the issues and report back to the committee. The committee appointed is composed of Jennifer Aspaas, Jake Miller, Ian Ledlin and Jan Armstrong. Ted McGregor said he would call the committee together.

Next, Ted McGregor explained that due to the introduction of additional equipment it is now possible for the court to give copies of selected documents to selected parties. He proposed that copies of the schedules, statements of affairs and the like could now be delivered in paper format to the U. S. Trustee and the panel trustee, plus other agencies that now receive copies. By using this technology, paper copies would no longer need to be provided by parties filing petitions and associated documents. He suggested that LBR 5005-1 Filing Papers - Numbers of Copies, be abrogated. The suggestion was unanimously approved and Ted said he would move the adoption process along.

Jake noted that parties could expect that the U. S. Trustee office would soon begin to enforce the form for the operating statements in Chapter 11 cases. He noted that although there is a national U. S. Trustee form, he is more concerned with the quality of the information, and not particularly the exact format. He noted that some operating statements were simply deficient and inadequate.

With that, discussion was completed and the meeting was adjourned following comments by the judges that they appreciated the meetings and find them to be very helpful. **The next Advisory Committee meeting is scheduled for noon-4 p.m., Thursday, June 6, 2002 at Sun Mountain.**